IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.3799 of 2003
Date of Decision: 30.10.2007

Ranjit Singh & Ors. ...Petitioners

Vs.

Rali Kaur & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Gurcharan Singh, Advocate,
for the petitioners.
Mr.R..K.Battas, Advocate,
for the respondents No.3, 6 to 8 and 15 to 19.

Vinod K.Sharma, J. (Oral)

Present revision petition has been filed against the order passed by the learned Additional District Judge (Ad-hoc) Fast Track Court, Patiala vide which application moved by the petitioners under section 5 of the Limitation Act for condoning the delay of 692 days in filing the appeal has been ordered to be dismissed.

The petitioners sought condonation of delay of 692 days on the ground that the counsel representing the petitioners had informed them that the suit filed by them stood decreed and no further action was required to be taken. It was on account of the said fact that the petitioners did not take

necessary steps to file the appeal before the learned lower appellate court and therefore, it was claimed that the delay has occurred due to wrong advice given by the counsel while handing over the copies of the judgment and decree passed by the learned trial court. The application was contested by the respondents who took a plea that no ground for condonation of delay is made out in the application filed by the petitioners.

On the pleadings of the parties learned lower appellate court has been pleased to frame an issue to the effect, "Whether there are sufficient grounds to condone the delay in filing the appeal?"

In support of their case the petitioners examined AW1 Bhagwan Singh, one of the petitioners and AW 2 Gurmeet Singh. AW 1 Bhagwan Singh deposed that the suit was filed by him against Rali Kaur and others in the year 1985 which was said to have been decreed about 5 years back and his counsel had given him the photocopies after 2-3 months and said that the suit was decreed in their favour and therefore, there was no need to file an appeal. It was deposed in the evidence that about 2 and half years back when he met the counsel representing the petitioners in Patiala it was told that the execution was filed and it was at that stage when he was told that the sale deeds have not been set aside and thereafter he applied for the certified copies of the judgment and decree and the appeal was filed about 8/9 days after the receipt of the certified copies.

Learned lower appellate court did not believe the story set up by the plaintiff-petitioners primarily on the ground that the Bagwan Singh

petitioner himself had got report Ex.R.1 entered on the basis of decree dated 29.2.1998. Therefore, the learned lower court disbelieved the story put up by the plaintiffs by observing that it is not possible to swallow that while getting entered the decree Ex.R.2 the petitioner would not have come to know that the suit was partly decreed. The court also noticed that it has come in the statement of the petitioner himself that the counsel representing him in the trial court had handed over the photocopies of the judgment and decree. However, the said decree was not produced on record. Thus, the story put up by the petitioners was disbelieved and the application dismissed by holding that no sufficient grounds had been made out for condonation of delay.

Learned counsel for the petitioners contends that the order passed by the learned Additional District Judge cannot be sustained as Bhagwan Singh was an illiterate person and was not capable to read photo copy of the judgment and decree handed over to him and had to believe the statement given by Shri Nika Singh, Advocate, and therefore, the contention of the learned counsel for the petitioners is that in view of the law laid down by Hon'ble Supreme Court in the case of **Collector, Land Acquisition, Anantnag and another Vs. Mst.Katiji and Ors AIR 1987 SC** 1353 learned lower appellate court ought to have allowed the application for condonation of delay as it has been authoritatively laid down in the said judgment as under:-

"3. The legislature has conferred the power to condone

delay by enacting S.5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on 'merits'. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters, instituted in this court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realised that:-

“Any appeal or any application, other than an application under any of the provisions of O.XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.?

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned

the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained," does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

This plea of the petitioners cannot be accepted. Firstly, the case under reference is dealing with the delay by the authorities of the State where the Hon'ble Supreme Court has been pleased to lay down that in the case of State which represents the collective cause of community, does not

deserve a litigant non grata status; and therefore, delay of four days deserved to be condoned, on account of an impersonal machinery and the inherited bureaucratic Methodology imbued; with note making, file pushing, and passing on the buck of ethos. Even otherwise, the Hon'ble Supreme Court has nowhere laid down that in all cases delay has to be condoned even if no case is made out. Present case is a glaring example of such a case where the appeal has been filed after 692 days just after obtaining the certified copies of the judgment and decree from the learned trial court.

The stand taken by the petitioners that they were wrongly guided by the counsel in the trial court prima facie cannot be believed as it was the petitioner who got the said decree incorporated in the revenue record by approaching the Patwari and the entry of the decree was made in the revenue record in his presence. The petitioners can be given benefit of mere assertion that he being illiterate person was not knowing what he was doing Therefore, the learned lower appellate court was right in rejecting the application moved by the petitioners for condonation of delay. The judgment of Hon'ble Supreme Court relied upon by the petitioner does not advance his case.

No ground is made to interfere by this court in revisional jurisdiction.

Dismissed.

(Vinod K.Sharma)
Judge

30.10.2007

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